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SENATE BILL 739

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Shannon Robinson

AN ACT

RELATING TO TAXATION; INCREASING THE PERCENTAGE OF THE SEVERANCE TAX PERMANENT FUND ALLOWED TO BE INVESTED IN NEW MEXICO FILM PRIVATE EQUITY FUNDS; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2005.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-27-5.26 NMSA 1978 (being Laws 2000 (2nd S.S.), Chapter 6, Section 2, as amended by Laws 2005, Chapter 101, Section 2 and by Laws 2005, Chapter 106, Section 1) is amended to read:

"7-27-5.26. INVESTMENT IN FILMS TO BE PRODUCED IN NEW MEXICO.--

A. No more than [~~five~~] six percent of the market value of the severance tax permanent fund may be invested in New Mexico film private equity funds or a New Mexico film

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1 project under this section.

2 B. If an investment is made under this section, not
3 more than fifteen million dollars (\$15,000,000) of the amount
4 authorized for investment pursuant to Subsection A of this
5 section shall be invested in any one New Mexico film private
6 equity fund or any one New Mexico film project.

7 C. The state investment officer shall make
8 investments pursuant to this section only upon approval of the
9 state investment council after a review by the private equity
10 investment advisory committee and the New Mexico film division
11 of the economic development department. The state investment
12 officer may make debt or equity investments pursuant to this
13 section only in New Mexico film projects or New Mexico film
14 private equity funds that invest only in film projects that:

15 (1) are filmed wholly or substantially in New
16 Mexico;

17 (2) have shown to the satisfaction of the New
18 Mexico film division that a distribution contract is in place
19 with a reputable distribution company;

20 (3) have agreed that, while filming in New
21 Mexico, a majority of the production crew will be New Mexico
22 residents;

23 (4) have posted a completion bond that has
24 been approved by the New Mexico film division; provided that a
25 completion bond shall not be required if the fund or project is

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1 guaranteed pursuant to Paragraph (5) of this subsection; and

2 (5) have obtained a full, unconditional and
3 irrevocable guarantee of repayment of the invested amount in
4 favor of the severance tax permanent fund:

5 (a) from an entity that has a credit
6 rating of not less than Baa or BBB by a national rating agency;

7 (b) from a substantial subsidiary of an
8 entity that has a credit rating of not less than Baa or BBB by
9 a national rating agency;

10 (c) by providing a full, unconditional
11 and irrevocable letter of credit from a United States
12 incorporated bank with a credit rating of not less than A by a
13 national rating agency; or

14 (d) from a substantial and solvent
15 entity as determined by the state investment council in
16 accordance with its standards and practices; or

17 (6) if not guaranteed pursuant to Paragraph
18 (5) of this subsection, have obtained no less than one-third of
19 the estimated total production costs from other sources as
20 approved by the state investment officer.

21 D. The state investment officer may loan at a
22 market rate of interest, with respect to an eligible New Mexico
23 film project, up to eighty percent of an expected and estimated
24 film production tax credit available to a film production
25 company pursuant to the provisions of Section 7-2F-1 NMSA 1978;

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1 provided that the film production company agrees to name the
2 state investment officer as its agent for the purpose of filing
3 an application for the film production tax credit to which the
4 company is entitled if the company does not apply for the film
5 production tax credit. The New Mexico film division of the
6 economic development department shall determine the estimated
7 amount of a film production tax credit. The state investment
8 council shall establish guidelines for the state investment
9 officer's initiation of a loan and the terms of the loan.

10 E. As used in this section:

11 (1) "film project" means a single media or
12 multimedia program, including advertising messages, fixed on
13 film, videotape, computer disc, laser disc or other similar
14 delivery medium from which the program can be viewed or
15 reproduced and that is intended to be exhibited in theaters;
16 licensed for exhibition by individual television stations,
17 groups of stations, networks, cable television stations or
18 other means; or licensed for the home viewing market; and

19 (2) "New Mexico film private equity fund"
20 means any limited partnership, limited liability company or
21 corporation organized and operating in the United States that:

22 (a) has as its primary business activity
23 the investment of funds in return for equity in film projects
24 produced wholly or partly in New Mexico;

25 (b) holds out the prospects for capital

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1 appreciation from such investments; and

2 (c) accepts investments only from
3 accredited investors as that term is defined in Section 2 of
4 the federal Securities Act of 1933, as amended, and rules
5 promulgated pursuant to that section."

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